

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4274 of 1997

with

SPECIAL CIVIL APPLICATION No 8172 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

KANTILAL MOIRAM C/O IC KHAN

Versus

EXECUTIVE ENGINEER

Appearance:

MRS DT SHAH for Petitioner

MR ANANT DAVE AGP for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 18/09/98

ORAL JUDGEMENT

The petitioner in Special Civil Application No.4274 of 1997 is a person who was working as a cook in the Government Guest House at Junagadh. It was his case that he had put in three years continuous service,

whereafter he was terminated without any notice on 9th July 1988 and that work was available and, although another person Kishorebhai was engaged in his place, he was illegally retrenched. He, therefore, sought a reference to the Labour Court. That reference being No.1303/90 was forwarded to the Labour Court at Junagadh. The respondent - State filed reply. However, they did not cross-examine the petitioner nor did they controvert the above fact. No evidence was led either documentary or oral on behalf of the respondent - State. The learned Judge of the Labour Court accepted the version of the petitioner and directed his reinstatement in his original post with only 20% backwages. Being aggrieved by denial of 80% of the backwages and continuity of service, Special Civil Application No.4274 of 1997 is filed by the workman.

2. Special Civil Application No.8172 of 1997 is filed by the State Government challenging the very award inasmuch as it awards reinstatement and 20% backwages to the workman concerned. In the petition filed by the State Government, it is stated in paragraph 2 that the workman concerned had worked for only 12 different days in the year 1986, 143 days in 1987 and 24 days in 1988. Mr.Dave states that the Government is in a position to produce the relevant record to support these figures.

3. The fact, however, remains that the State Government had all the opportunity in the Labour Court to demolish the submissions of the workman. The reference was made in the year 1988 and decided in the year 1996. For eight full years, the Government officers and their lawyers did not take care either to cross-examine the workman or to lead their evidence either documentary or oral. If that was the state of affairs, the learned Judge of the Labour Court could not be faulted with for accepting the version of the workman and drawing the inference against the State Government.

5. Even so, when it is stated in the petition of the State Government that there has been documentary material in its support, in my view, it would not be proper that the Government should be saddled with the responsibility for the errors of its officers or lawyers. At the same time, it will have to be seen that the workman is also not made to suffer. In the circumstances, in my view, ends of justice would be met if the proceeding in the Labour Court is restored to file by protecting the workman concerned adequately. In the circumstances, Reference No.1303/90 will stand restored by setting aside the award passed by the Labour Court only on the

following terms:

- (i) The State Government permits the workman concerned to resume duty which will be so done without prejudice to the stand of the Government. The workman concerned will be permitted to join duty on the first working day of October 1998;
- (ii) He will be paid all his due wages from the date of award i.e. 9th March 1996 and will be continued to be paid his wages from month to month thereafter until the restored reference is decided. All the arrears payable to the workman will be paid by first of November 1998;
- (iii) 20% backwages payable to the workman will be deposited in the Labour Court at Junagadh. The court will keep the amount in fixed deposit initially for a period of one year and the interest thereon will be paid to the workman unconditionally; and
- (iv) When the matter is heard again, the State Government will be at liberty to produce all documentary and oral evidence and the matter will be proceeded from the stage of cross-examination of workman. The workman will participate in the proceeding and will be entitled to canvass that reinstatement and all the backwages as well as continuity ought to be granted to him.

Both these petitions are disposed of in the terms stated above. Direct Service is permitted.

(KMG Thilake)

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